

P & S MINING CO.

IBLA 80-64

Decided January 23, 1980

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring mining claims abandoned and void. OSO 3833 (952).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Location -- Mining Claims: Recordation

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claim are properly declared abandoned and void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Location -- Mining Claims: Recordation -- Words and Phrases

"Date of Location." The date of location of a mining claim is determined in accordance with the law of the State where the claim is situated. Under Washington law, it is the date specified on the notice of location filed with the local recorder's office.

3. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Location -- Mining Claims: Recordation

The date of location of a mining claim may not be changed by altering this date on the

copy of the notice of location filed with BLM so that it reflects a date different than that in the original notice.

APPEARANCES: Dan C. Peterson, Manager, P & S Mining Company.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On October 11, 1979, the P & S Mining Company (P & S) filed copies of notices of location for 12 mining claims with the Oregon State Office, Bureau of Land Management (BLM). These notices indicated that the claims had been located at various times in August, September, and October 1978, more than a year prior to the filing of these copies. 1/ Accordingly, on October 17, 1979, BLM issued a decision declaring the claims abandoned and void under 43 CFR 3833.4(a), because copies of notices of location thereof had not been filed within 90 days after the date of location as required by 43 CFR 3833.1-2(b). BLM returned the copies and the service fees which P & S had tendered.

In its notice of appeal, P & S states that the dates of location specified on the copies which it had filed with BLM were incorrect. Instead, it states that 10 of these claims were actually located in May 1979 and the remaining two in September 1979. 2/ It also emphasizes the fact that the 10 claims had not been recorded with the local recordation office until June 4, 1979, and that the other two had not been recorded there until August 1979.

[1] Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim located after October 21, 1976, must file with BLM a copy of the official record of the notice of location within 90 days after the date of location, failing which the claim shall be declared abandoned and void under 43 CFR 3833.4(a). Topaz Beryllium Co. v. United States, Civ. No. 77-0405 (D. Utah 1979); Carl Dowler, 44 IBLA 192 (1979); M. J. Reeves, 41 IBLA 92 (1979); William E. Rhodes, 38 IBLA 127 (1978); R. Wade Holder, 35 IBLA 169 (1978); and Northwest Citizens for Wilderness Mining Co., Inc., 33 IBLA 317 (1978).

[2] The date of location is determined in accordance with the law of the state where the claim is situated. 43 CFR 3833.0-5(h). Under the law of the State of Washington, where these claims are situated, the date of location is that specified by the locator on the notice of location filed with the record office. Wash. Code Ann. 78.08.040. In this case the critical date is not, as appellant suggests, the date of recordation of the notice of location with the State, but is rather the date of location specified on the notice of location. This accords with the regulation, supra.

1/ See appendix.

2/ See appendix.

Appellant recorded its notices of location for 10 of these claims on June 4, 1979, and for the remaining two on August 24, 1979, specifying in these notices that the dates of location were variously in August, September, and October 1978. Thus, these are the dates of location which determine whether appellant timely filed copies of these notices with BLM. As appellant did not file copies of these notices with BLM until more than a year after these dates, it clearly did not comply with 43 CFR 3833.1-2(b), and BLM properly declared them abandoned and void.

[3] Appellant's revision of these dates in the copies submitted with its notice of appeal does not cure the deficiency. As noted above, the controlling date is that which appears on the notice of location as filed with the State's recordation office, and this date may not be changed by altering the copy of the notice submitted to BLM so that it bears a different date. Carl Dowler, supra. In any event, the revised dates of location for 10 of these claims are still more than 90 days before the filing of the copies with BLM. Moreover, as to the other two claims, appellant now contends that the date of location was after the date of recordation of those claims with the State, an obvious impossibility.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

APPENDIX

| <u>Claims</u> | | <u>Dates of Location Specified On Original Notices</u> | <u>Modified Dates of Location</u> |
|---------------|----|--|---------------------------------------|
| Dodge # | 11 | 9-25-78 | 5-25-79 |
| Sahler | 12 | 9-10-78 | 5-10-79 |
| Pa | 1 | 8-30-78 | 5-30-79 |
| Nana | 9 | 8-30-78 | 5-30-79 |
| Clyde | 7 | 8-30-78 | 5-30-79 |
| Boo Boo | 8 | 8-30-78 | 5-30-79 |
| Carrera | 5 | 8-25-78 | 5-25-79 |
| Porche | 6 | 9-10-78 | 5-10-79 |
| Tinker | 3 | 10-10-78 | 9-10-79 |
| Luiz | 4 | 10-1-78 | 5-10-79 |
| Snooky | 1 | 10-10-78 | 9-10-79 |
| Azure | 9 | 9-10-78 | 5-10-79 |

